

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-580320-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: William LEAVY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1773

William LEAVY

This appeal has been taken in accordance with Title 46 United States Code 239(G) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 5 February 1969, an Examiner of the United States Coast Guard at Philadelphia, Pa., suspended Appellant's seaman's documents for six months plus three months on six months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board SS AMERICAN SCIENTIST under authority of the document above captioned, Appellant:

- 1) on or about 23 and 24 September 1968, failed to perform duties while the vessel was in a domestic port;
- 2) on or about 8 November 1968, failed to perform duties while the vessel was in a foreign port; and
- 3) on or about 12 November 1968, failed to perform duties while the vessel was in a foreign port.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced no evidence.

Appellant made unsworn statements explaining how his offenses took place.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months plus three months on six months' probation.

The entire decision order was served on 7 February 1969.

Appeal was timely filed on 13 February 1969.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an AB seaman on board SS AMERICAN SCIENTIST and acting under authority of his document.

On 23 and 24 September 1968, when AMERICAN SCIENTIST was in a port in California, Appellant failed to report to the ship to stand his watches.

On 8 and 12 November 1968, at Subic Bay, P.R., Appellant overslept, without good cause, and failed to stand his watches.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is excessive because Appellant will suffer serious financial loss.

APPEARANCE: Appellant, pro se.

OPINION

I

It is first noted that the specifications alleged that the offenses occurred "in a domestic port" or "in a foreign port" as appropriate. Since the requirements of national security which called for protection of merchant vessel locations and movements are not involved in this era, there is no need to couch specifications in such secretive language.

The record shows clearly that the offenses of 8 and 12 November 1968 were committed while the vessel was at Subic Bay, P.R., and the Examiner has so found. The Examiner also found that the offenses of 23 and 24 September 1968 were committed at Long Beach, California. The record shows that Appellant Long Beach, California, is not referred to in the record at all.

It may be that no distinction need be made between the ports of Long Beach and Los Angeles, or Wilmington, or that an allegation that an offense was committed in one such "port" or another could be properly be changed after the record has been made if the evidence so indicated. But the fact that a seaman joined a vessel at Log Angeles on 9 September 1968 does not authorize findings that offenses of 23 and 24 September 1968 occurred at Long Beach.

The record reflects, and Appellant admitted, that the vessel was in California on 23 and 24 September 1968. In view of the fact

that Appellant admitted the offenses, and admitted that the ship was in California, any minor error is corrected by my findings that the offenses occurred while the vessel was in a port in California.

Additionally, it is noted that the place of many acts of misconduct is not of the essence, but notice should refer to date and place for clarity and place for clarity and orderly procedure, when possible and allowable.

II

The challenge to the severity of the order must be rejected.

At the time of the first three offenses in the instant case (but probably not at the time of the fourth) Appellant was on probation under an earlier order of an examiner. Violation of the earlier probation order necessitated that the six months' suspension previously placed on probation be made effective.

The Examiner in the instant case did no more, with respect to effective suspension, than invoke the required six months. The suspension which he found appropriate for the instant offenses he placed entirely on probation.

The order is therefore not excessive. The financial loss to Appellant through loss of employment as a documented seaman is something he should have thought of before he violated his probation.

ORDER

The findings of the Examiner made at Philadelphia, Ps., on 5 February 1969, are MODIFIED in that the offenses of 23 and 24 September 1968 are found to have occurred in a port in California rather than at Long Beach, California, and, as MODIFIED, are AFFIRMED.

The order of the Examiner, entered at the same time and place, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26 day of June 1969.

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